

Risk Management



Avoiding Risk With Nonadherent Patients

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Innov Clin Neurosci. 2015;12(3–4):37–40

This ongoing column is dedicated to providing information to our readers on managing legal risks associated with medical practice. We invite questions from our readers. The answers are provided by PRMS, Inc. (www.prms.com), a manager of medical professional liability insurance programs with services that include risk management consultation, education and onsite risk management audits, and other resources to healthcare providers to help improve patient outcomes and reduce professional liability risk. The answers published in this column represent those of only one risk management consulting company. Other risk management consulting companies or insurance carriers may provide different advice, and readers should take this into consideration. The information in this column does not constitute legal advice. For legal advice, contact your personal attorney. Note: The information and recommendations in this article are applicable to physicians and other healthcare professionals so “clinician” is used to indicate all treatment team members.

QUESTION

“I have a few patients who routinely fail to follow my treatment recommendations. In some instances, they don’t keep scheduled appointments or take the medications I’ve prescribed. Other times, they are lax about obtaining lab work or refuse to work with a therapist. I’ve come to the conclusion that there is really very little I can do about this. Patients are free to choose whether to follow my recommendations, and as long as I thoroughly document everything, I shouldn’t worry about liability exposure. After all, some care is better than no care—right?”

ANSWER

Unfortunately, it’s not quite so cut and dried. While one would like to believe that adults should be held accountable for their own actions or inactions, this is not necessarily how it works. If a patient is harmed due to his or her nonadherence to a physician’s recommendations, a jury will look to see what efforts the physician made to affect adherence. Believing that a physician has a better understanding of the ramifications of a patient’s failure to pursue or continue treatment than does the patient, a jury may impose a greater burden upon the physician. This may be even more true if the patient involved suffers from a psychiatric condition that might be presumed to affect his or her judgment. Many nonadherent patients (or surviving family members in a worst-case scenario) have prevailed against physicians by convincing juries that the physician did not take adequate measures to elicit adherence to treatment recommendations. The following are suggestions for identifying and managing nonadherent patients.

WHO ARE THE NONADHERENT PATIENTS?

While many psychiatrists recognize that a certain portion of their patient population may not be adherent to treatment recommendations, they are often not aware of exactly which patients these are.¹ Thus, the first step is to determine exactly which patients are not following treatment recommendations. This may be demonstrated by the patient's failure to schedule or to keep appointments, failure to obtain requested lab work or testing, failure to fill or take prescriptions as prescribed, failure to report worsening symptoms, or engaging in behaviors that are contrary to what you have advised. Sometimes the patient's nonadherence is apparent when he or she returns to your office because the patient's condition has worsened or failed to improve. Other times it may only be discovered by careful monitoring and questioning.

Each time you see your patients, rather than asking a question that can be answered with a "yes" or "no" (e.g., "Are you experiencing any problems with the medication?"), ask how your patients are taking the medication or ask patients how many doses they think they've missed in the last week.² Be specific in your questioning. Ask about how/when your patients are taking the medication and ask whether they are experiencing any of the major known side effects. Check to see whether your patients' requests for refills are consistent with individuals who are taking the medication as prescribed.

Most patients will occasionally have to reschedule an appointment or may miss one altogether. This may simply be the effect of life getting in the way, or it may be a sign of nonadherence. When an appointment is cancelled at the last minute or the patient fails to show, it is apparent as you suddenly have an open block of time. What may

be less obvious, however, is the patient who cancels well in advance or fails to schedule a follow-up appointment altogether. To monitor this situation, you might want to develop a system that allows you to track whether a patient is scheduling and keeping appointments as recommended. If your patient is not keeping appointments, based upon your treatment plan for the individual patient, you should decide whether the patient needs to be contacted. All efforts to contact a patient for follow-up should be thoroughly documented in the patient's record.

BARRIERS TO ADHERENCE

Once you have determined that a patient is nonadherent, the next step in managing the problem is determining why the patient is nonadherent. Is it because the patient is intentionally disregarding your recommendations or is he or she unable to follow them for some reason? Is there a desire on the part of the patient but some sort of barrier that precludes adherence?

Health literacy. One barrier might be that of health literacy—the ability to read, understand, and act on health information. Although the ability to read has an impact on health literacy there is not a direct correlation between the two. In other words, assessing general reading levels does not ensure patient understanding in a clinical setting. Adherence to treatment plans may be an issue for patients with poor health literacy because they cannot remember or do not understand what they are told. Health literacy is an especially serious problem for aging populations with multiple chronic conditions requiring constant medication and self-monitoring.

Language. Are language issues creating a lack of understanding? While your patient may be able to

communicate well enough to explain his or her symptoms, he or she may not have the fluency to comprehend more technical information regarding illness and suggested treatment.

Culture. Cultural influences may arise and impede care in certain recurring situations. Patients may disclose information in ways that incorporate culturally specific and appropriate metaphors that are not understood by the psychiatrist, and vice versa. For example, if the diagnosis of clinical depression is stigmatized in the patient's culture, the patient with depression may report only physical symptoms, such as fatigue and weight loss.

Hearing ability. Pursuant to the Americans with Disabilities Act (ADA), reasonable accommodations must be made for hearing impaired patients. Additional information is available from the Department of Justice and the American Medical Association. When treating hearing impaired patients, psychiatrists should keep in mind that deaf patients' attempts at lip reading may not be successful. Also, using family members to interpret raises additional problems, such as the family member's ability to accurately and meaningfully express complicated psychiatric issues, the family member being a part of the patient's clinical concerns, and confidentiality issues.

NONADHERENCE AND MEDICATION

Many patients who otherwise adhere very closely to their physician's recommendations regarding appointments and tests may be nonadherent when it comes to taking their medication. Rates of nonadherence for patients with acute conditions typically show higher rates of adherence than those with chronic conditions who tend to show sharp decreases in adherence after the first six months. Half of patients with major depression who have been prescribed

antidepressants will have stopped taking their medication three months after beginning treatment.³

Considerations for nonadherence to medication regimens include the following:

- Is it possible that your patient doesn't appreciate the severity of the situation? Many patients with mental illness suffer from anosognosia—a lack of insight into their condition. Anosognosia is caused by physiological damage to the brain and is believed to affect approximately 40 percent of patients with bipolar disorder and 50 percent of patients with schizophrenia. According to the National Alliance on Mental Illness (NAMI), anosognosia is the leading cause of nonadherence in patients with these conditions.⁴
- Mix-up among various prescriptions
- Confusion regarding dosage schedules
- Difficulty in taking the medication (e.g., the pill is too large to swallow)
- Displeasure with side-effects, particularly if the medication causes a reduction in sexual function or desire, weight gain, or acne
- Concerns about becoming addicted to the medication
- Concerns that medication may alter personality
- Stigmatization by family members and other caregivers⁵
- Belief that the medication is ineffective because the patient did not see an anticipated improvement in a specific time period
- Cost or lack of insurance
- Lack of appreciation of benefit if changes are not felt or seen
- Belief that the condition has

been “cured” once some improvement is seen.

Nonadherence often results in inadequate or incomplete treatment, which in turn may prolong the patient's illness. This can lead to a longer period of therapy and increased costs, which again may lead to decreased adherence. Additional problems may occur when patients see other providers and fail to apprise you of other medication(s) those physicians may have prescribed, or when patients take herbal remedies and other over-the-counter medications that they fail to mention. To facilitate medication adherence and eliminate interactions, consider the following:

- Ask patients to bring in all of the medications they are taking (including over-the-counter [OTC, nonprescription] medications) to their appointments.
- Encourage patients to fill prescriptions at only one pharmacy.
- Advise patients to speak with you or their pharmacist before adding other medications to their regimen.
- Work to strengthen the therapeutic alliance. Explain why the medication is being prescribed and its anticipated effect. Emphasize the patient's responsibility in achieving the desired outcomes. Explore factors in patient's life that may affect his or her ability to adhere to treatment.⁶ Discuss with the patient his or her goals and the role medication will play in achieving those goals.⁷
- Provide patients with written instructions on how and when to take medications. These instructions should be written in clear, concise language. The

purpose of each medication and its intended results should be included. United States Food and Drug Administration (FDA) medication guides are an excellent resource and may be found at www.fda.gov.

- Keep a medication flow sheet in your patients' records that allows you to see at a glance what medications you have prescribed, whether a refill was obtained at the appropriate time, and whether the medications have been discontinued. This will assist in discussions with patients regarding their adherence.
- To the extent possible, simplify dosing regimens. For example, if possible, reduce the number of daily doses or time doses to coincide with meals.
- Encourage patients to use devices to aid them in taking medications. Something as simple as a pillbox or setting up their cell phones to alert them could help.
- Help facilitate access to medication by considering the affordability of medications prescribed and substituting lower cost generics or alternative medications when appropriate.
- Take advantage of pharmaceutical companies' patient-assistance programs.
- Recognize that a patient's adherence may fluctuate and adjust your interventions.

TALK TO YOUR PATIENT

If these methods prove to be ineffective, you may need to have a discussion with your patient regarding your inability to continue to treat if there is no agreement on the treatment plan. This discussion should cover specific areas in which the patient has been nonadherent as well

as the risks of remaining nonadherent. This discussion is important in order to confirm that the patient is aware of the consequences of failing to follow treatment recommendations and that the patient's decision to continue to do so is an informed one. If your patient refuses to make or keep appointments, you may need to have this discussion by phone. If you are not able to speak to the patient, you should consider sending a letter setting forth your concerns.

If the patient will allow you to do so, try enlisting the support of the patient's family or other caregivers. Family members and others who are supportive of the patient's mental healthcare may have some influence on the patient's adherence to treatment.

As the treating psychiatrist, you have a responsibility to educate and advise the patient regarding his or her best options for treatment. The final decision of whether to accept these options remains that of the patient. This does not mean, however, that you must continue to try to treat a patient who refuses to follow your treatment plan. You cannot treat a patient who will not allow you to do so.

TERMINATION MAY NEED TO BE CONSIDERED

If you have discussed the issue of nonadherence with the patient and the patient still refuses to follow treatment recommendations, you should consider terminating the treatment relationship. To avoid allegations of abandonment, the entire termination process should be followed.

The general termination process is as follows:

1. Talk to the patient and explain the need to terminate.
2. Provide notice—usually 30 days.
3. Educate the patient about your treatment recommendations.
4. Provide referral resources (e.g.,

local hospital referral services).

5. Provide a copy of your record per patient authorization.
6. Send a follow-up letter confirming the termination discussions; send via certified mail and via regular first class mail or via delivery confirmation.

State medical boards and managed care organizations may have specific requirements for termination of the physician-patient relationship. Remember to check with relevant licensing boards and review provider contracts with insurance companies to see if additional steps are necessary.

FINALLY—DOCUMENT YOUR EFFORTS

Many physicians do an excellent job of communicating with their patients and work very hard to facilitate adherence but fail to give themselves credit for these efforts because they don't adequately document them. Documentation is key in managing risk associated with nonadherent patients. Remember to thoroughly document a patient's nonadherence, your conversations with patient and/or patient's caregivers regarding the need to follow your recommendations, as well as any written materials given to the patient. Remember also to note any calls made to the patient and retain copies of all letters sent.

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